

**AMENDED AND RESTATED
AGREEMENT FOR USE AND SUPPORT OF A SOLID WASTE DISPOSAL SYSTEM**

THIS AMENDED AND RESTATED AGREEMENT, dated this 26th day of June, 2002, is made by and between the SOUTHEASTERN PUBLIC SERVICE AUTHORITY OF VIRGINIA, hereinafter referred to as the "Authority" and the CITY OF SUFFOLK, VIRGINIA, hereinafter referred to as the "City".

WHEREAS, the Authority has constructed and now operates a Regional Landfill on a site containing approximately three hundred fifty (350) acres of land located in the City; and

WHEREAS, the parties entered into an agreement dated April 12, 1983, later amended, in which the Authority agreed with the City as to the terms and conditions imposed on the Authority for the use of the said property for said purposes and the City agreed with the Authority for the City's use and support of the Authority's regional solid waste disposal system; and

WHEREAS, the parties now desire to clarify and modify the terms of their agreement in a number of respects, and by this instrument to fully amend and restate their agreement.

NOW, THEREFORE, in consideration of the premises and the mutual covenants, conditions and undertakings set forth below, the Agreement between the City and the Authority originally dated April 12, 1983 is hereby amended and restated in its entirety to read as follows:

I. BASIC INTENT AND PURPOSE

A. This Agreement is entered into pursuant to the authorization and mandate of the Virginia Water and Waste Authorities Act.

B. The Authority, subject to the terms, provisions and conditions hereinafter set out and in accordance with the procedures and provisions hereinafter made and declared, desires to maintain a safe, sanitary, and environmentally sound solid waste disposal system and for and by such system accept and dispose of the non-hazardous solid waste of the City and other surrounding cities and counties of Southeastern Virginia for and during the term of this Agreement.

C. The City, subject to the terms, provisions and conditions hereinafter set out and in accordance with the procedures and provisions hereinafter made and declared, desires to use and support the Authority's solid waste disposal system by providing for the disposal by means of the Authority disposal system of the solid waste generated within, collected by, or otherwise under the control of the City.

II. DEFINITIONS

For the purpose of this agreement, the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural tense include the singular and words in the singular include the plural. The word "shall" is always mandatory and not directory.

A. Disposable Solid Waste ("DSW") - any Solid Waste other than Hazardous Waste, including especially material having energy value but currently being discarded without recovery of such energy value.

B. Disposal System – all of those plants and facilities of the Authority designed to collect, manage and dispose of Solid Waste and those designed to recover and use the energy from Solid Waste and the land, structures, vehicles and equipment for use in connection therewith.

C. Hazardous Waste – Solid Waste which because of its quantity, concentration, or physical, chemical or infectious characteristics may: (a) cause or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness; or (b) pose a substantial present or potential hazard to human health, the Disposal System, or the environment when treated, stored, transported, or disposed of or otherwise managed.

D. Landfill – the Regional Landfill developed and operated by the Authority in the City of Suffolk, Virginia as of the date of this Restated Agreement for the disposal of Solid Waste, including all future additions, expansions and modifications thereto on the same or any contiguous property.

E. RDF Processing Facility – the Authority's plant and facilities in the City of Portsmouth, Virginia designed to process Processable Solid Waste into a combustible fuel, and the land, structures, vehicles and equipment for use in connection therewith.

F. Solid Waste – all material customarily referred to as garbage and refuse, including any that is capable of being recycled; sludge from a Virginia Department of Environmental Quality approved waste water treatment facility which, upon toxicity analysis undertaken per procedures as prescribed by the Virginia Health Department has a composition which is within the appropriate established limits prescribed by the Virginia Health Department and the U.S. Environmental Protection Agency; sludge from a water supply treatment plant or air pollution control facility; and other discarded material, including solid, liquid, semisolid, or contained

gaseous material resulting from industrial, commercial, mining, and agricultural operations, and from community activities, but shall not include solid or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to permits under Section 402 of the Federal Water Pollution Control Act, as amended (86 STAT. 880) or source, special nuclear, or by product material as defined by the Atomic Energy Act of 1954, as amended (68 STAT. 923).

G. Tipping Fee -- the charge made by the Authority for the disposal of Solid Waste.

III. TERM OF AGREEMENT

This Amended and Restated Agreement shall become effective upon its execution by both parties and shall continue for a term expiring January 24, 2018, unless sooner terminated by the parties in accordance with the terms hereof.

IV. LANDFILL OPERATIONS

A. Facilities and Improvements.

1. The Authority shall furnish all labor, tools, and equipment necessary to operate the Landfill and shall be responsible for all required maintenance thereof. Supervision by an experienced and qualified person shall be provided at all times when the Landfill is open for use or operation.

2. The Authority agrees to pay all normal and standard charges for all water, electrical power, natural gas, and phone service utilized at the Landfill.

3. The Authority shall construct and maintain at its expense any facilities, improvements, and buildings within the site necessary for the operation of the Landfill. In

addition, the Authority shall construct, on the site, a transfer station of a design and capacity acceptable to both parties that will be available for non-exclusive use by the City under the terms of this Agreement and the Authority's operating policies and procedures in effect from time to time.

4. The Authority agrees to provide, at its expense, certain off-site improvements relative to the Landfill, designed and for the purposes of traffic flow as follows:

Modifications to US 58 West

- a. The Authority will lengthen the deceleration lane leading to the Landfill entrance, to enable vehicles to slow to a safe speed to prepare for the right turn into the Landfill site without creating a bottleneck for westbound through traffic.
- b. Vehicles exiting the Landfill will be required to turn right onto US 58 West. No Landfill traffic will be allowed to turn left when exiting the Landfill so as to cross US 58 West in order to access US 58 East.
- c. The Authority will construct an acceleration lane on US 58 West for vehicles exiting the Landfill. After merging with traffic on US 58 West, eastbound vehicles will remain in the right lane and exit onto a ramp leading to a flyover connecting to US 58 East.
- d. The flyover will be constructed as an adjunct to the Downtown Suffolk exit on US 58 West. This exit ramp will extend from the Downtown Suffolk exit lanes, loop over US 58 West, the Suffolk exit lanes and US 58 East, and connect to an acceleration lane on

US 58 East. The flyover will accommodate vehicles exiting the Landfill site that desire to travel eastbound on US 58.

Modification to US 58 East

- a. The Authority will construct an acceleration lane on US 58 East to receive traffic from the flyover, described above, connecting from US 58 West. Traffic will merge from the acceleration lane into the right lane of US 58 East.
- b. The Authority will lengthen the deceleration lane leading to the Landfill entrance, to enable vehicles to slow to a safe speed to prepare for the turn into the Landfill site without creating a bottleneck for eastbound through traffic.

5. The Authority agrees to use its best efforts to complete the transfer station described in section 3, and the off-site improvements described in section 4, above on or before July 1, 2004. The date on which both are completed and in operation is hereafter referred to as the "Improvement Completion Date."

B. Compliance With Laws

1. The Authority shall operate the Landfill in compliance with all applicable laws, ordinances and regulations; the rules and regulations of the Health Department; and the ordinances of the City and all applicable land use regulations. The Conditional Use Permit and the conditions established by the Council of the City of Suffolk are incorporated herein, and the City expressly reserves the right to revoke any permits based upon violations of the City's Unified Development Ordinance or the Conditional Use Permit and the conditions established by the Council of the City of Suffolk. It is agreed and understood that any violation of any of the

City permits which have been issued for the Landfill shall also be a violation of the terms and conditions of this Agreement.

2. It is expressly agreed that the permitted height of the Landfill shall be a maximum of 220 feet above mean sea level.

3. It is also expressly agreed that neither the Authority nor the City will grant permits or easements, or permission for construction on or through the site for any organization other than the Authority, without the express permission of the other. The City agrees that it will grant no permits or permission for construction, expansion or operation of any solid waste management facility without the express permission of the Authority.

C. No Obligation

Nothing in this Agreement shall be construed to require the Authority to continue to operate the Landfill for the disposal of Solid Waste, and the Authority shall have the right to terminate the operation of the Landfill at any time, subject to the Authority's obligations hereunder.

V. DELIVERY CONDITIONS

The City hereby agrees to deliver or cause to be delivered to the Disposal System in accordance with this Agreement, substantially all (at least ninety-five percent per year) the DSW which is generated or collected by or within, or under control of, the City. The Authority hereby agrees to receive and accept all DSW delivered to the Disposal System by the City during the term of this Agreement and further agrees to properly dispose of it, subject to the terms and conditions of this Agreement. The City hereby agrees that all DSW to be delivered to the

Authority pursuant to this Agreement shall be delivered in accordance with the terms and conditions set forth in this Agreement.

VI. DELIVERY POINTS

In addition to the Landfill, the Authority operates as part of its Disposal System various other points of delivery for the disposal of Solid Waste. All DSW of the City which does not require special methods of handling or disposal may be delivered for disposal to any delivery point that is operated and maintained by the Authority from time to time as part of its Disposal System, including the Landfill and the transfer station to be constructed at the Landfill site as described in Article IV.A. The Authority shall have the right, at all times, to designate a separate delivery point or points for grades or categories of Solid Waste which may require special handling or disposal.

VII. TIPPING FEES

A. The City.

So long as all or any part of the Landfill is operated by the Authority for the disposal of DSW under the terms of this Agreement and City permits, the City shall not be required to pay a Tipping Fee for the disposal of DSW that is collected within the City and that is delivered either to the Landfill or to any transfer station operated by the Authority at the Landfill site (i) by the City in City vehicles, or (ii) by municipal contractors operating under contract with the City. If the Authority ceases to operate the Landfill for the disposal of DSW, the City shall pay the Authority Tipping Fees as established under the prevailing fee schedules adopted by the Authority for the disposal of Solid Waste by its other member localities.

B. Household Users.

No Tipping Fee shall be charged to any user who delivers household DSW generated or collected within the City to the Authority for disposal either to the Landfill or to any transfer station operated by the Authority at the Landfill site in a privately owned automobile or a low-side pickup truck, subject to the Authority's reasonable rules and regulations governing the disposal of that waste at the Landfill. For purposes of this classification, "household DSW" means Solid Waste which, in the judgment of the Authority, is normally produced by a single family residential household, and the Authority reserves the right, in its sole discretion, to classify any user who delivers non-household DSW by means of a privately owned automobile or low-side pickup truck as a "General User" that is not exempt from the payment of Tipping Fees.

C. Peanut Processing Residue

No Tipping Fee shall be charged to any user who delivers to the Landfill for disposal peanut processing residue generated from processing operations located in the City. Peanut processing residue shall mean, generally, peanut hulls, dirt, rock, stems and related dry organic matter produced by such processing operations. This exemption from Tipping Fees shall apply only to deliveries to the Landfill and not to any transfer station operated by the Authority at the Landfill site.

D. General Users

All users delivering DSW generated or collected within the City to the Authority other than the City, household users, and users delivering peanut processing residue to the Landfill, as described in sections A, B, and C above, including but not limited to commercial users delivering waste not contracted for by the City, shall be deemed General Users. Unless party to a separate

agreement with the Authority providing for the payment of alternate disposal or Tipping Fees, each General User who delivers DSW either to the Landfill or to any transfer station operated by the Authority at the Landfill site shall be charged Tipping Fees as follows:

1. During the period beginning on the effective date of this Amended and Restated Agreement and ending June 30, 2002, General Users shall be charged a Tipping Fee at the rate of \$11.38 per ton.
2. During the period beginning July 1, 2002 and ending June 30, 2003, General Users shall be charged a Tipping Fee equal to the higher of (i) \$11.38 per ton, or (ii) 33% of the per ton Tipping Fee established by the Authority and in effect at the time of the delivery for waste of a like kind and quantity that is not generated in the City but which is delivered to the Landfill by a like user of the Authority's disposal system.
3. During the period beginning July 1, 2003 and ending on the Improvement Completion Date (as defined in section IV.A.5. above), General Users shall be charged a Tipping Fee equal to the higher of (i) \$11.38 per ton, or (ii) 66% of the per ton Tipping Fee established by the Authority and in effect at the time of the delivery for waste of a like kind and quantity that is not generated in the City but which is delivered to the Landfill by a like user of the Authority's disposal system.
4. On and after the Improvement Completion Date, all General Users shall be subject to the same Tipping Fees established by the Authority for deliveries to the Disposal System of waste that is not generated or collected within the City but that is delivered by a like user of the Authority's Disposal System.

5. All General Users who deliver DSW to the Authority at a point of delivery other than the Landfill shall be charged the Authority tipping fees in effect at the time of delivery for a like kind and quantity of waste delivered to that location.

E. Administration of Rates.

The discounted Tipping Fees set forth above shall apply and be available only to users whose waste is generated within the City and is delivered to the Landfill or, as permitted, to any transfer station operated by the Authority at the Landfill site; by employees of the generating user in vehicles owned by or leased to the generating user. The Authority reserves the right to require such certifications or other proof as it deems appropriate to establish the source of any waste delivered to the Authority or the residence or identity of any user delivering waste, for the purpose of applying the applicable rates and charges provided above.

F. Billing.

The Authority shall invoice the City for any applicable Tipping Fees on a monthly basis, within ten (10) days after the end of the month. Said invoices will show the total tonnage received by the Authority from or on behalf of the City during the billing period. Such invoices shall be due and payable on the last day of the month following the month covered by the invoice.

G. Other Fees and Compensation.

No other fees, fines, compensation, or charges shall be charged to the City other than those addressed in this Agreement, for such services as are delineated in this Agreement.

H. Calculation of Weight.

Solid Waste delivered to any delivery point will be weighed or otherwise measured for the purpose of determining actual amount received. In the event of inoperation of

the Authority's weighing scales or other measuring device for purposes of maintenance, repair, or replacement, an estimate of Solid Waste actually received will be computed based on the average amount received per vehicle, when dumping records for such vehicle for the two full months immediately preceding are available, or, when such records are not available, will be computed based on the average amount received per vehicle of like size and/or compaction ratio, during the last two full months weighing scales or measuring devices at the delivery point were operational.

I. Fees---No Exemption of Law.

Nothing in this article shall exempt the Authority from requirements of general law with respect to setting of fees and rates for services offered.

VIII. TITLE TO SOLID WASTE

The City agrees that it shall assign and transfer to the Authority all of the City's right, title and interest in and to all DSW delivered to and accepted by the Authority pursuant to this Agreement and such ownership shall vest in the Authority when recorded by the Authority's weighing scales or other measuring devices at a delivery point, except that title to Hazardous Waste shall not vest in the Authority even if recorded by the Authority's measuring devices. However, inoperation of the Authority's weighing scales or devices shall not alter the transfer of title of DSW to the Authority, if it is otherwise accepted.

IX. INSPECTION

To insure that the detailed specifications, regulations and laws for the operation of a sanitary landfill are complied with, the Landfill site and operation may be inspected at any time

during the term of this Agreement by a representative of the City and such other agents, advisors or consultants as the City may determine.

X. RIGHT TO CURE DEFAULTS; RIGHT OF OFFSET

A. In the event of default under this Agreement, the nondefaulting party shall have the right, but not the obligation, to cure such default and to charge the defaulting party for the cost of curing said default, including the right to offset said costs of curing the default against any sums due or which become due to the defaulting party under this Agreement.

B. Both parties shall have a right of offset. Either party who owes an amount to the other may withhold from that payment any amount due from the other. However, a party's reduction in payment by offset shall not determine or in any way effect any claim or right with respect to the withheld amount.

XI. LIABILITY

A. Insurance.

The Authority agrees to furnish the City with certificates of insurance or other proof satisfactory to the City evidencing that:

1. All vehicles and equipment used by the Authority to transport Solid Waste into the Landfill site have public liability insurance limits as follows:

Liability	\$1,000,000
Medical Payments, Private Passenger	\$5,000
Vehicles and Light Trucks Only	

Uninsured and Underinsured Motorist \$1,000,000;

2. Public liability insurance in the following amounts shall remain in effect for a period not less than thirty (30) years after the Landfill ceases operation as a Landfill, the cost for which shall be borne entirely by the Authority:

General Aggregate Limit	\$2,000,000
Products-Completed Operations Aggregate	\$2,000,000
Personal and Advertising Injury	\$1,000,000
Each Occurrence Limit	\$1,000,000
Fire Damage Limit (Any One Fire)	\$ 300,000
Medical Expense Limit (Any One Person)	\$ 10,000
Employee Benefits Liability	\$1,000,000
Failure to Supply Services to Others	\$1,000,000;

3. Either (a) an environmental pollution protection insurance policy in the amount of \$2 million, with the City named as a co-insured, is in effect through cessation of operation of the Landfill, or (b) an escrow account in the principal amount of \$2 million has been established for the purpose of satisfying those claims or other obligations which would be made against the City or the Authority under such a commercial environmental pollution protection insurance policy; and

4. The Authority has in force with a company authorized to transact business in the Commonwealth of Virginia, a policy of insurance fulfilling all requirements of the Workmen's Compensation Act of Virginia, including all legal requirements for occupational diseases. The Authority shall have Workers Compensation Insurance coverage as follows:

Statutory coverages for Virginia and all work sites.

Remove these exclusions in the Workers Compensation form which addresses the USL&H Act Coverages.

Employer' Liability of \$500,000/\$500,000/\$500,000 or the minimum limits required by SPSA's Umbrella underwriters.

5. The Authority shall have Commercial/Umbrella/Excess Liability as follows:

General Aggregate	\$5,000,000
Products-Completed Operations	\$5,000,000
Each Incident Limit	\$5,000,000

B. Environmental Protection Trust Fund.

1. The Authority shall maintain an Environmental Protection Trust Fund (Trust Fund), in the form in force and effect as of the date of this Amended and Restated Agreement, with such future modifications as may be agreed upon by both parties. The Authority initially contributed \$50,000 to the Trust Fund and shall continue to contribute not less than \$5,000 annually through the year of cessation of operation of the Landfill. The Trust Fund shall be in the form of an interest bearing account, administered by a financial institution jointly selected by both the City and the Authority, and such Trust Fund shall remain in existence for a period of thirty (30) years after cessation of operations at the Landfill. Upon expiration of such thirty (30) year period, all accrued and unused income and principal shall be distributed to each city and county which is or was a member of the Authority during the term of the Trust Fund, in the same proportion which the aggregate amount of Tipping Fees paid by such city or county during its term as a member of the Authority bears to the total amount of Tipping Fees paid by all such member cities and counties during the term.

2. The Authority shall prepare and submit to the City, on an annual basis through the year of cessation of operation of the Landfill, a status report detailing all funds contributed and all interest accrued on such Trust Fund.

3. It is expressly understood by both the Authority, and its successors, and the City that the purpose of the aforementioned Trust Fund is to address all costs related to any legal suits, mitigation claims, or similar activities, not otherwise covered by insurance, relating to environmental pollution or groundwater damage claims made against SPSA relative to the Landfill, during the thirty (30) year period after cessation of operation of the Landfill. It is further expressly understood that, during said thirty (30) year period, the City and the Authority shall have exclusive control of the Trust Fund and all disbursements made therefrom shall be at the joint discretion of the City and the Authority, or their successors or assigns.

XII. INDEMNIFY AND HOLD HARMLESS

To the extent permitted by law, the Authority hereby binds itself to indemnify and hold harmless the City from all claims, demands and/or actions, legal and/or equitable, arising from the Authority's operation of all Landfill sites and transfer stations herein above described.

XIII. STANDARD OF PERFORMANCE

The failure of the City at any time to require performance by the Authority of any provisions hereof shall in no way effect the right of the City thereafter to enforce same. Nor shall waiver by the City of any breach of any provisions hereof be taken or held to be a waiver of any succeeding breach of such provisions or as a waiver of any provision itself.

XIV. INSOLVENCY

This Contract shall terminate in the case of insolvency of the Authority. The time of termination in the event of bankruptcy shall be the day and time of the filing of the petition of insolvency.

XV. NO PARTNERSHIP

Nothing herein shall be construed to constitute a joint venture between the Authority and the City or the formation of a partnership.

XVI. FORCE MAJEURE

A. Acts Beyond Control.

“Force Majeure” shall mean any cause beyond the reasonable control of the party whose performance is affected, including but not limited to acts of God, war, riot, fire, explosion, wind storm, flood, labor disputes, inability to obtain or use fuel, power, or raw materials, shortage or failure of the usual means of transportation, injunction, governmental action, accident, or breakdown of machinery or equipment, whether or not any such occurrence is caused by the negligence, active or otherwise, of the affected party, its agents and employees. “Reasonable control” of a party shall specifically exclude that party’s ability to reach agreement in a labor dispute and that party’s ability to settle or compromise litigation.

B. No Default.

Failure of either party to perform under this Agreement, including failure of the City to deliver or cause to be delivered DSW, and inability of the Authority to accept DSW at any or all delivery points, by reason of Force Majeure shall not constitute default nor be cause for

termination of this Agreement. However, the party so failing to perform shall immediately notify the other party of the failure, including reasons therefore, and shall make reasonable efforts to correct such failure to perform at the earliest possible date.

XVII. EXTENT OF AGREEMENT

This Agreement, together with the Conditional Use Permit which is made a part hereof, represents the entire and integrated agreement between the City and the Authority and supersedes all prior negotiations, representations or agreements, either written or oral. The provisions of this Agreement may be amended only by a written instrument signed by both the City and the Authority.

XVIII. ASSIGNMENT

No assignment of this Agreement, or any right occurring under this Agreement, shall be made in whole or part by the Authority without the express written consent of the City, and in the event of any assignment, the assignee shall assume the liability of the Authority.

XIX. SEVERABILITY

If any provision of this Agreement shall be declared illegal, void, or unenforceable, the other provisions shall not be affected, but shall remain in full force and effect.

XX. LANDFILL SITE CLOSURE, FINAL PLAN AND COMPLETION

A. Final Plan

Not less than two years prior to the anticipated final cessation of Landfill operations the Authority and the City shall mutually select a landscape architectural firm, whose services shall be paid for by the Authority. This firm, working together with the City, shall develop a final plan for use of the site after the life of the Landfill has expired. One (1) year before the cessation of operation of the Landfill, the final development plan must be in a stage to be accepted and ready for implementation, to the City's satisfaction.

B. Conveyance of Property to City

1. Landfill Site

Upon permanent completion of the operation of the Landfill by the Authority for disposal of Solid Waste, in accordance with the provisions hereof, the Authority shall execute a deed conveying the Landfill site to the City with Special Warranty of Title.

2. Acceptance by City

Upon acceptance and recordation of the aforementioned deed, the terms of this Agreement shall be deemed satisfied, except for those conditions, relative to liabilities of the Authority, which may remain outstanding and unsatisfied at the time. The City shall grant to the Authority the right of access to the Landfill site for a term not less than the time required by the Authority to fulfill its remaining obligations hereunder, if any.

3. Reservation and Limitation on Conveyance

a. The parties acknowledge that the Authority has contracted with O'Brien/Johnson Biogas Producing (Suffolk), a general partnership, ("Producing"), for the construction and operation by Producing of a system for the collection, transmission and commercial processing of gas and related products generated by the composition of waste within the Landfill. Such system shall include, but not be limited to, wells, pipelines and utility lines

which shall be owned by Producing and installed primarily underground but in part above ground on the Landfill Site. The City (a) acknowledges the right of the Authority under the Agreement to contract with Producing for the installation, maintenance and operation of such system; (b) agrees that the plan to be prepared under the joint direction of the parties pursuant to this Article for recreational use of the Landfill Site following its active use as a landfill shall incorporate and take into account the continued presence, maintenance and operation of Producing's system and equipment; (c) agrees that the conveyance of the Landfill Site to the City following cessation of the Authority's operation of the Landfill, in accordance with the Agreement, shall be subject to the right of Producing to continue to maintain and operate its system and equipment as installed on the Landfill Site at the time of its conveyance to City, for and during the remaining term of the contract between the Authority and Producing, including all necessary rights of ingress and egress essential for Producing to so maintain and operate its system; and (d) agrees that Producing, in accordance with the terms of its contract with the Authority, shall have the right upon expiration or termination of that contract to remove all of its above-ground personal property, fixtures and improvements on the Landfill Site and to abandon in place the underground well and collection system installed by it.

b. The parties acknowledge that the Authority has contracted with O'Brien/Johnson Biogas Generating (Suffolk), a general partnership, and two affiliated partnerships (together, the "Generating Partnerships"), for the construction, maintenance and operation on a portion of the Landfill Site of equipment to generate electrical power, including related equipment, pipelines and utility lines used for the purpose of generating electrical energy for sale by the Generating Partnerships. Subject to continuing compliance by the Generating Partnerships with the terms of their contracts with the Authority and with applicable City use

permits, zoning laws, and other laws and regulations, the conveyance of the Landfill Site to the City following cessation of the Authority's operation of the landfill, in accordance with the Agreement, shall be subject to the right of the Generating Partnerships to continue to occupy that portion of the Landfill Site leased from the Authority as of the date the Landfill Site is conveyed to City under the Agreement, and the Generating Partnerships shall have the right to continue to operate and maintain their equipment on the site for the purpose of generating electrical energy for sale. Such right shall include all necessary rights of ingress and egress essential for the Generating Partnerships to operate and maintain such equipment. City further agrees that the Generating Partnerships, in accordance with the terms of their contracts with the Authority, shall have the right within six months after the expiration or termination of such contracts to remove all above-ground personal property, fixtures and improvements which the Generating Partnerships have placed on the site, which property, fixtures and improvements shall be and remain the property of the Generating Partnerships.

c. The Authority hereby agrees that nothing in the foregoing provisions or in its contracts with Producing and the Generating Partnerships shall operate or be construed to relieve the Authority of its obligations to the City under the Agreement, or take such other action, as may be required by law or otherwise for the purpose of treating, handling, or otherwise disposing of explosive gases in excess of applicable standards. Notwithstanding the foregoing, it is expressly agreed between the Authority and the City that the Environmental Protection Trust Fund described in Article XI above shall not be used to fulfill any obligation of the Authority to the City arising out of or related to any contract or contracts between the Authority and Producing or the Authority and the Generating Partnerships and related to the generation and transmission of electricity utilizing landfill gas.

d. References herein to Producing and the Generating Partnerships shall include their successors and assigns as permitted under the contracts between the Authority and those entities.

XXI. HOSIER ROAD LANDFILL

A. Closure and Post-Closure Care

During the term of this Agreement, the Authority shall manage on behalf of the City the closure and post-closure care of the Hosier Road landfill owned by the City and formerly operated by it. The Authority shall undertake all activities, and prepare and maintain all reports and other documents, required by federal, state or local law or regulation for normal closure and post-closure care of a municipal sanitary landfill.

B. Fees and Expenses

1. To the extent practicable using otherwise available Authority staff, the Authority shall provide the personnel to manage the services described above without charge to the City. The Authority, subject to approval by the City, shall select contracted services by third party professionals as deemed necessary and appropriate by the Authority, and the City shall be responsible for any and all fees and expenses of third parties required in connection with or resulting from those services, including but not limited to laboratory tests, sampling, and any remedial or curative measures ordered or required by federal, state or local law or regulation. The City agrees to promptly pay such fees and expenses, and to reimburse the Authority for any such fees or expenses properly incurred by the Authority on behalf of the City, and to indemnify and hold the Authority harmless with respect to such fees, expenses and costs.

2. The Authority shall provide a report to the City, in a form established by the City, as to the status of all aspects of the landfill condition. The Authority shall also submit to the City, by February 1 of each year, the anticipated costs and fees of all activities described herein for the following fiscal year.

C. Termination

The City may at any time terminate the Authority's services relating to the Hosier Road landfill under this Article XXI, effective immediately upon the Authority's receipt of written notice of termination or upon such other date as may be specified by the City in the notice of termination. Following receipt of notice of termination, the Authority shall take all steps necessary to complete any contracted third party services, by termination or assignment to the City as the City may direct and as may be permitted. The City will pay or reimburse the Authority for the cost of any final third party invoices within 30 days of billing by the Authority.

D. Liability

The Authority shall use due diligence and its best efforts to provide the management services described in paragraph A. above, but shall not be responsible or liable in any respect for costs, damages, or claims of any kind arising from or connected with the condition of the City's landfill, including but not limited to environmental damage or pollution or personal injury. The City agrees to indemnify and hold the Authority harmless against any and all such costs, damages, claims and expenses, including the costs of any attorney fees expended by the Authority in defense of any asserted liability.

IN WITNESS WHEREOF, the City and the Authority have each caused this instrument to be signed on its behalf and its seal to be affixed and attested by officials thereunto duly authorized.

ATTEST:

CITY OF SUFFOLK

By: Myles Standish

Approved as to Form:

By: C. James Batty, Jr.
City Attorney

SOUTHEASTERN PUBLIC SERVICE
AUTHORITY OF VIRGINIA

By: [Signature]

COMMONWEALTH OF VIRGINIA)
CITY OF CHESAPEAKE) ss:

The foregoing instrument was acknowledged before me this 26 day of JUNE 2002, by MYLES STANDISH, MANAGER of the City of Suffolk, Virginia.


[Signature]
Notary Public

My Commission Expires:

April 30, 2004

COMMONWEALTH OF VIRGINIA)
) ss:
CITY OF CHESAPEAKE)

The foregoing instrument was acknowledged before me this 26 day of
JUNE 2002, by JOHN S. HADEFIELD, an officer of the Southeastern
Public Service Authority of Virginia.


Notary Public

My Commission Expires:

APRIL 30, 2004

FIRST AMENDMENT
TO
AMENDED AND RESTATED
AGREEMENT FOR USE AND SUPPORT OF A SOLID WASTE DISPOSAL SYSTEM

THIS FIRST AMENDMENT TO AMENDED AND RESTATED AGREEMENT FOR USE AND SUPPORT OF A SOLID WASTE DISPOSAL SYSTEM (the "First Amendment"), is made this 22nd day of December, 2005, by and between, SOUTHEASTERN PUBLIC SERVICE AUTHORITY OF VIRGINIA (the "Authority") and the CITY OF SUFFOLK, VIRGINIA (the "City"). All capitalized terms not otherwise defined herein shall have the respective meanings ascribed to them in the Amended and Restated Agreement for Use and Support of a Solid Waste Disposal System dated as of June 26, 2002 (the "Agreement").

WHEREAS, the parties hereto executed the Agreement, by which the Authority agreed with the City as to the terms and conditions for the use of property in the City as a regional landfill site and the City agreed with the Authority concerning the City's use and support of the Authority's regional solid waste disposal system;

WHEREAS, following Hurricane Isabel in 2003, the City disposed of Disaster Waste (as hereinafter defined) at the Landfill and this action resulted in a disagreement between the City and the Authority;

WHEREAS, the Authority's Disaster Response Plan and the Regional Infrastructure and Debris Management Emergency Planning Model for Hampton Roads each contain a policy against the disposal of debris from major storms at the Landfill; and

WHEREAS, the City and the Authority desire to confirm this policy and, in order to do so and to avoid future disagreements regarding the disposition of Disaster Waste (as hereinafter defined) at the Landfill, they have agreed to amend the Agreement as herein provided.

NOW, THEREFORE, for good and valuable consideration and the mutual promises and covenants contained herein, the receipt and sufficiency of which is acknowledged, the parties do hereby amend the Agreement as follows:

1. Addition of Section II(H). The following paragraph shall be added to Section II of the Agreement:

H. Disaster Waste – all debris and waste that is the result of or is generated by natural or man-made disasters that have been declared to be disasters by the Governor of Virginia or the President of the United States ("Declared Disasters") or is generated by the cleanup and reconstruction resulting from Declared Disasters, including such waste and debris resulting from hurricanes, tornadoes and other major storm events, wars or terrorist attacks and other Declared Disasters; provided however, that the term "Disaster Waste" shall not include incidental amounts of Solid Waste that may be included with Solid Waste that is

collected by the Authority's member localities and private hauler contractors in the ordinary course of their normal and routine collection activities.

2. Amendment to Section V. Section V of the Agreement shall be amended by including the following sentence as the second sentence of Section V:

Notwithstanding the foregoing, however, the City agrees not to dispose of Disaster Waste at the Landfill or at any transfer station that is operated by the Authority so long as other member localities do not dispose of Disaster Waste at these facilities.

3. Affirmation. Except as provided above, the Agreement is ratified and confirmed in all respects.

IN WITNESS WHEREOF, the Authority and the City have caused this First Amendment to Amended and Restate Agreement for Use and Support of a Solid Waste Disposal System to be duly executed on their behalf and attested as of the date first above written.

AUTHORITY:

SOUTHEASTERN PUBLIC SERVICE
AUTHORITY OF VIRGINIA

By: _____


John S. Hadfield, Executive Director

Attest:



CITY:

CITY OF SUFFOLK

By: R. Steven Herbert
R. Steven Herbert, City Manager

Attest:

Gerald J. Jenkins

Approved as to Form:

C. John R. [Signature]
Title: CITY ATTORNEY

SECOND AMENDMENT
TO
AMENDED AND RESTATED
AGREEMENT FOR USE AND SUPPORT OF A SOLID WASTE DISPOSAL SYSTEM

THIS SECOND AMENDMENT TO AMENDED AND RESTATED AGREEMENT FOR USE AND SUPPORT OF A SOLID WASTE DISPOSAL SYSTEM (the "Second Amendment"), is made this 5th day of SEPTEMBER, 2007, by and between, SOUTHEASTERN PUBLIC SERVICE AUTHORITY OF VIRGINIA (the "Authority") and the CITY OF SUFFOLK, VIRGINIA (the "City"). All capitalized terms not otherwise defined herein shall have the respective meanings ascribed to them in the Amended and Restated Agreement for Use and Support of a Solid Waste Disposal System dated as of June 26, 2002 (the "Original Agreement") as amended by the First Amendment to Amended and Restated Agreement for Use and Support of a Solid Waste Disposal System dated December 22, 2005 (the "First Amendment"). The Original Agreement as amended by the First Amendment are together referred to herein as the "Agreement."

WHEREAS, the parties hereto executed the Agreement, by which the Authority agreed with the City as to the terms and conditions for the use of property in the City as a regional landfill site and the City agreed with the Authority concerning the City's use and support of the Authority's regional solid waste disposal system;

WHEREAS, the City and the Authority, in order confirm the Authority's policy regarding the disposal of debris from major storms and to avoid disagreements regarding the disposal of Disaster Waste at the Landfill entered into the First Amendment; and

WHEREAS, the City and the Authority desire to amend the Agreement further to provide for the construction and operation by the Authority of two additional Solid Waste transfer stations in the City, to provide that the Authority will not convey title to the Landfill to the City upon the cessation of operations at the Landfill, and to confirm that the City will pay Tipping Fees during any period during which there is no disposal of Solid Waste at the Landfill.

NOW, THEREFORE, for good and valuable consideration and the mutual promises and covenants contained herein, the receipt and sufficiency of which is acknowledged, the parties do hereby agree as follows:

1. **Contingent Nature of Second Amendment.** On or before July 1, 2010, the Board of the Authority shall decide by formal and discrete resolution whether the Authority will construct Cell VII. In the event the Board upon consideration of the resolution elects not to construct Cell VII, as of the date of such election the rights, obligations and benefits set forth in this Second Amendment shall be null and void, and this Second Amendment shall be deemed of no effect. In that event, the Agreement shall consist of the Original Agreement, as amended by the First Amendment.

2. **Acknowledgement of Completion of Improvements.** The Authority and the City acknowledge and agree that the transfer station and all road improvements described in

Section IV(A)(3)-(5) have been constructed and provided in accordance with the terms of the Agreement.

3. **Addition of Section IV(A)(6).** The following subparagraph 6 shall be added to Section IV(A) of the Agreement:

6. Prior to the commencement of disposal of Solid Waste in Cell VII of the Landfill, the Authority shall construct and commence operation of a Solid Waste transfer station in the northern part of the City (the "Northern Transfer Station"), with a throughput capacity of 500 tons per day, at a location to be agreed upon in good faith by the Authority and the City; provided, however, that if SPSA, as of the date Cell VII is available for acceptance of Solid Waste for disposal, has not constructed or commenced operation of the Northern Transfer Station due to failure to obtain a conditional use permit from the City with conditions that are legal and reasonable under the circumstances, SPSA shall be entitled to commence disposal of Solid Waste in Cell VII prior to commencement of operation of the Northern Transfer Station. Not later than commencement of disposal of Solid Waste in Cell VII, the Authority shall begin construction of a Solid Waste transfer station in the southern part of the City (the "Southern Transfer Station"), with a throughput capacity of 250 tons per day, at a location to be agreed upon in good faith by the Authority and the City. The Authority shall use its best efforts to complete construction of the Southern Transfer Station within eighteen months after the commencement of disposal of Solid Waste in Cell VII. Upon commencement of the operation of the Southern Transfer Station, the Authority and the City, subject to the approval of any regulatory agencies with jurisdiction, shall cooperate to reconfigure at the Authority's expense the intersection of US 58 E and Bob Foeller Road, in order to preclude vehicles traveling east on US 58 E from turning left into the entrance to the Landfill. In addition, at any time after commencement of the operation of the Southern Transfer Station, the Authority in its sole discretion shall be entitled to modify, remove, expand, restrict the use of or cease to operate the transfer station described in Section IV(A)(3) above.

4. **Addition of Sentence at the End of Section V.** The following sentence shall be added at the end of Section V of the Agreement:

Notwithstanding anything to the contrary in this Agreement, the Authority shall not be obligated to accept for disposal peanut processing residue at transfer stations operated by the Authority.

5. **Addition of Text to Section VII(A).** The following text shall be added at the end of Section VII(A) of the Agreement:

For purposes of this Section VII(A), the Authority shall be deemed to have ceased to operate the Landfill for disposal during any period in which the Authority for lack of capacity or for any other reason has suspended disposal of Solid Waste at the Landfill.

6. **Deletion of Section XX.** Section XX LANDFILL SITE CLOSURE, FINAL PLAN AND COMPLETION shall be deleted from the Agreement in its entirety, Section XXI HOSIER ROAD LANDFILL shall be designated as Section XX, and "XX" shall be substituted for "XXI" in new Section XX(C).

7. **Substitution of Phrase for "At the Landfill Site" in Section VII.** The phrase "within the City limits" shall be substituted for the phrase "at the Landfill site" where it occurs after the word "Authority" in Section VII (A), (B), (C), (D), and (E) of the Agreement.

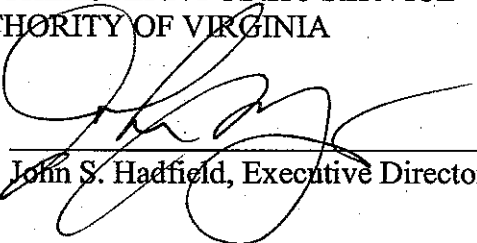
8. **Affirmation.** Except as provided above, the Agreement is ratified and confirmed in all respects.

IN WITNESS WHEREOF, the Authority and the City have caused this Second Amendment to Amended and Restated Agreement for Use and Support of a Solid Waste Disposal System to be duly executed on their behalf and attested as of the date first above written.

AUTHORITY:

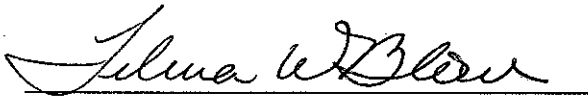
SOUTHEASTERN PUBLIC SERVICE
AUTHORITY OF VIRGINIA

By: _____



John S. Hadfield, Executive Director

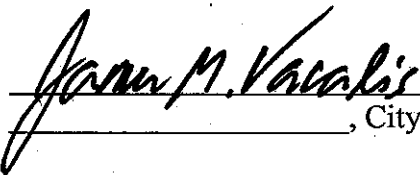
Attest:



CITY:


CITY OF SUFFOLK

By: _____



, City Manager

Attest:



Approved as to Form:

 Title: Asst. City Mgr